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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 273.

THE UNITED STATES, Appellant,

vs.

WILLIAM T. SAMPSON, Rear Admiral U. S. Navy, Etc.

Appeal from a Special Term of the Supreme Court of the District of Columbia.

BRIEF FOR THE APPELLEE.

McCAMMON & HAYDEN,
Proctors for the Appellee.

JAMES H. HAYDEN,
Advocate.

PRESS OF BYRON S. ADAMS.

Supreme Court of the United States.

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THE UNITED STATES, Appellant,
vs.
WILLIAM T. SAMPSON, Rear-Admiral U. S. Navy, etc.

BRIEF FOR THE APPELLEE.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Supreme Court of the District of Columbia, sitting as a prize court.

These are the facts:

On the morning of July 3, 1898, about 9.45 o'clock, the Spanish fleet, under the command of Admiral Cervera, consisting of the armored cruisers "*Infanta Maria Teresa*," "*Viscaya*," "*Almirante Oquendo*," and "*Cristobal Colon*" and two torpedo boats, which had been lying in the harbor of Santiago, made a sortie and attempted to force its way past the American fleet, then blockading the port. The "*Teresa*" was the first Spaniard to pass out of the harbor. She was struck repeatedly by shells from the United States vessels, which caused the wood-work in her superstructure to take fire and put her out of action. She was beached about five miles to the westward of Santiago, and hauled down her flag in token of surrender, at 10.30 A. M. The survivors of her crew were taken off in boats to the United States vessels and made prisoners of war. (*Report: Sec-*

retary of the Navy, 1898, Vol. II, pp. 505–557.) On July 5th, Captain F. E. Chadwick, U. S. N., the libellant's chief of staff, and several other officers, visited the "*Teresa.*" They found her stranded on a beach of coral sand, bows on to shore, and about one hundred yards distant from it. She lay in an upright position, grounded for the greater part of her length, and submerged to her normal load-water line. She had suffered little damage from gun-fire. Her hull proper, her main engines and boilers, and the machinery below her protective deck were practically intact. Her structural strength was unimpaired. Her injuries were of a local character. Her superstructure had been damaged by the burning of her wood-work. She was completed in 1894 and, like all modern vessels, was built principally of steel. The amount of combustible material contained in her was so small that the fire was extinguished before it reached her magazines, coal bunkers, or machinery. Her larger guns were practically uninjured. Her smaller guns had sustained considerable damage from the fire and much of her equipment had been consumed. But from the first, she was never considered otherwise than as a salvable ship and a prize (*pp. 31–38; 44–48; 51*). On July 6th, it being impossible to determine the condition of the Spanish vessels from a casual observation, Admiral Sampson appointed a board to inspect them and report the result. The order contained this statement: (*Report: Secretary of the Navy, 1898, Vol. II, p. 573.*)

> "It is thought that the '*Maria Teresa*' is practically uninjured below the water line, and may be floated and repaired."

The board consisted of five officers of the line of the Navy, two of the engineer corps, and one naval constructor.

On July 7th it commenced its work. The inspection made of each vessel was as thorough and complete as her position and condition permitted. On July 13th, the board made its report (*Id., pp. 574–592*). Each vessel was considered separately. In each case the findings and conclusions reported were adopted unanimously (*p. 117*). Appended to the report on the "*Teresa*" is a diagram which gives her longitudinal midship section as she lay on the beach. It was based upon information obtained from careful soundings. It shows that the ship was grounded for the greater part of her length, and had settled slightly in the sand. At her bows, the water was about 15 feet in depth and at her stern about 24 feet. At the stern her normal load water line was level with the surface of the sea. At the bow it protruded six feet or more above the water. In no sense was she sunk. The report describes the condition of the ship in general, and that of her parts and appurtenances in some detail. The conclusion of the board is given in these words (*Report: Secretary of the Navy, 1898, Vol. II, pp. 577–578.*);

> "The structural solidity of the ship ('*Teresa*') is not to any considerable degree injured. Barring local distortions, the hull is practically intact.
>
> "The outside skin is reported by divers as intact, so far as holes are concerned. The examination extended to the bilges, fore and aft, and in some parts near the extremities, to the bottom.
>
> "The lower portion of the vessel, up to the protective deck, is filled with water. The water comes in through the stern and other torpedo tubes.
>
> "The board is therefore of the opinion that it is possible and desirable to float the '*Infanta Maria Teresa.*' The vessel is lying about 100 yards from the beach, in a small cove, about five miles west of the Morro, and is grounded for the greater part of her length. The vessel lies in a very good position with deep water astern to facilitate pulling her off.

"She is fairly well protected against an easterly sea.

"The soundings in the immediate vicinity of the ship are indicated in the sketch appended and marked 'C.'

"The aftermast and also the funnels of the '*Infanta Maria Teresa*' are standing. The foremast has fallen aft and now lies along starboard gangway.

"It is recommended that the vessel be immediately secured by cables, so that she can not be moved from her present position."

The findings and conclusions with regard to the other vessels were very different. Neither the "*Oquendo*" nor the "*Viscaya*" had been sunk, but both were found to have sustained greater damage from gun fire. Their chief injuries, however, were the result of internal explosions which had destroyed the structural solidity of the hulls. As ships they were not salvable. In other words they had been destroyed. Some of their guns and equipment had sustained but slight injury and were salvable (*Id. pp. 583–589*). While the "*Colon*" had sustained no injuries of consequence from gun fire and none from conflagration, she was scuttled by her officers and crew after her surrender, and sank in water which varied from 35 to 90 feet in depth, where she lay on her beam ends. The board reported that the chance of saving her would be good, if prompt and efficient measures were taken, and if the weather continued favorable (*pp. 115–165*).

The American fleet did not possess appliances and materials adequate to float and repair large vessels which had been stranded. Pending the arrival of such things from the United States, the "*Teresa*" was secured in her position by cables. That was the only thing needed to preserve her from further injury (*pp. 177, 141, 151*).

On July 6th, three days after the engagement and the

day on which Admiral Sampson appointed the board to inspect the Spanish vessels, the Secretary of the Navy entered into a contract with the Merritt & Chapman Derrick and Wrecking Company, entitled: "Contract for raising Spanish war vessels now ashore on the southern coast of Cuba near Santiago" (*pp. 15–18*). By this contract the wrecking company was employed to save all of the vessels, or as many of them as possible, and deliver them to the United States at the Norfolk Navy Yard. The wrecking company agreed to provide a plant and a force of men adequate to prosecute the work to the best advantage. It was provided that:

> "An officer of the Navy, to be designated by the commander-in-chief, and at all times subject to his orders, under the direction of the Secretary, shall be present at the scene of the work as the Department's representative, to supervise and inspect the operations under this contract." . . .

The wrecking company equipped its steamer "*I. J. Merritt*" with pumps, derricks, and other machinery, and such materials as are employed in floating and repairing stranded vessels, and despatched her to Santiago with a force of machinists and wreckers. Work upon the Spanish vessels was begun about the middle of July. The U. S. Flagship "*New York*" and other vessels of Admiral Sampson's fleet remained in the vicinity of the "*Teresa*" until the 19th of July, and kept watch over her until the wrecking company and the representative of the Navy Department took charge of her. On the 12th of August the fleet left Cuban waters and came north under orders from the Secretary of the Navy (*pp. 39–40, 50, 60, 86, 133, 140, 145 and 15*). The wrecking company's force was assisted in its work by the U. S. Repairship "*Vulcan*" and her crew. An officer of the

Navy, acting as the representative of the Navy Department, was present at the scene of the work. At first, some of the smaller guns, anchors, chains, and tackle were taken off the "*Teresa*" and removed to a United States vessel where they remained in the custody of the Department's representative. (*Report: Secretary of the Navy, 1898, Vol. II, pp. 598–599.*) Next, her torpedo tubes and other apertures, which admitted the water to her hold, were closed, and an effort made to pump her dry. With difficulty, enough water was removed to give her some measure of buoyancy, but as soon as she rose from the bottom the water rushed in so rapidly that the pumps at hand could not keep her afloat. It was found that this inflow of water came through a hole in her bottom some three feet in diameter. When the vessel grounded a boulder of coral rock penetrated her outer skin, making the hole and cracking the plates in its immediate vicinity. Several attempts were made to float the ship, but all of them failed, owing to the improper methods employed. Toward the end of August it became apparent that the wrecking company's force and those assisting it were making no substantial progress. Commodore J. C. Watson, U. S. N., then in command of the naval force in the vicinity of Santiago, directed this despatch to the Secretary of the Navy: (*Id., p. 594*).

> "Wrecking company employing additional force clearing out all storerooms, lockers, forward compartments '*Maria Teresa*' to find leak, cutting through protective deck under chain locker to admit diver and suction pipe. *Admit previous mistakes.*" * * *

On the same day Commodore Watson received a report from Lieutenant George P. Blow, U. S. N., then commanding the naval contingent employed on the

"*Teresa.*" From this it appears that the wrecking company was resorting to new methods for floating the ship (*Id., pp. 595–597*). On August 27th the Secretary of the Navy directed this despatch to Commodore Watson (*p. 18*):

> "You are placed in charge of the wrecking operations with full authority to take such action as you may deem for the best interests of the Government, including the concentration of all work on the '*Maria Teresa,*' or otherwise, and discharge of men; proceed to scene of operations with any vessel you may wish to inspect. *Department inclined to believe wrecking companies unnecessarily dilatory and require sharp supervision.* Acknowledge."

Under its contract the wrecking company was to receive $800.00 a day for the period consumed in floating and repairing the ship in addition to further compensation to be paid in the event of ultimate success (*p. 17*).

Shortly after the completion of his work on the board appointed to inspect the Spanish vessels, Naval Constructor R. P. Hobson had proceeded to the United States on duty. On August 29th, he returned to the "*Teresa*" (*p. 151*). Perceiving that the work of recovery was being done without definite plan and in an inefficient manner, he cabled to the Navy Department, asking that he be given entire charge of the wrecking operations. Commodore Watson was instructed by the Department to give Hobson such leeway as he deemed proper, and Hobson was directed to report to Watson for instructions. (*Report: Secretary of the Navy, 1898, Vol. II, p. 599.*) By Hobson's advice, a change was made in the plan of the work. Commencing at the stern of the "*Teresa,*" her compartments, one by one, were made water-tight and pumped dry. The boulder which had penetrated her bottom was removed. The small compartment, in which the hole, made by the

boulder, was located, was segregated from the rest of the ship (*pp. 151–152*). On Friday, the 16th of September, Commodore Watson sent a cable to the Secretary of the Navy, in which he said: (*Report: Secretary of the Navy, 1898, Vol. II., p. 600.*)

> "* * * Goodrich reports work on '*Teresa*,' shows encouraging progress under Hobson's new methods. Ten 6-inch guns removed and in '*Leonidas*.' Fair prospect floating '*Teresa*' Monday or Tuesday."

On September 23d the "*Teresa*" was successfully floated. She proceeded to Guantanamo flying the American flag, using her own steam and in tow of the "*Merritt*" and the U. S. S. "*Potomac*."

On the 25th of September, Captain C. F. Goodrich, U. S. N., then in command of the naval force present, sent a dispatch to the Secretary of the Navy, in which he said (*Id., Vol. II, p. 600*):

> "'*Infanta Maria Teresa*' safe Guantanamo last night; '*Potomac*' aided towing. '*Newark*,' '*Scorpion*,' '*Vulcan*,' and '*Alvarado*' aided otherwise and in convoying; no incident or accident; preparations voyage north begin to-day * * *."

Appended to the report of the Chief of the Bureau of Construction and Repair, dated September 24, 1898, there is a "*Table of Vessels of the United States Navy.*" This includes a list of vessels, "*Captured in Spanish-American War*," on which appears the name of the "*Infanta Maria Teresa.*" She is described as a "steel armored cruiser," "being repaired" (*Id., Vol. I, pp. 511, 570–571*).

Lying at anchor, in the bay, off Guantanamo, the "*Teresa*" remained until the end of October, undergoing

repairs, which were made by the wrecking company with the assistance of the "*Vulcan's*" force. The work progressed slowly. Finally, Lieut.-Commander Ira Harris, of the "*Vulcan*," reported that the "*Teresa*" was ready for sea and in condition to make the voyage to Norfolk with a reasonable degree of safety. Captain C. M. Chester, U. S. N., then in command of the naval force present, ordered Harris to sail on the "*Teresa*" with a naval force composed of men who had volunteered for the voyage (*p. 23*). On October 29th, the "*Teresa*" left Guantanamo under her own steam, in tow of the "*Vulcan*" and "*Merritt*," and convoyed by the U. S. S. "*Leonidas*." On the night of the 30th, they passed the island of San Salvador (Watling's Island). Everything went well until the morning of November 1st, when a northeasterly storm set in. The "*Teresa*" had then covered about five hundred miles, or over a third of the distance to Norfolk. The seas came head on. All four of the vessels pitched heavily. Considerable water broke over the "*Teresa's*" bows and leaked through the temporary deck of wood, which had been put upon her at Guantanamo. No considerable amount of this water penetrated the protective deck and reached the ship's hold. The rivet holes in the plates of her superstructure, which had been elongated by the heat of the conflagration and had not been properly caulked before she sailed from Guantanamo, admitted considerable water. About five o'clock in the afternoon, the officers of the "*Teresa*" fearing that she would not weather the gale and was likely to founder, abandoned ship, making their way in small boats to the "*Merritt*" (*pp. 8–9*). The "*Teresa*" did not founder, but rode out the storm with no one at her helm; no oil bags in use to break the seas; and no one at her pumps. Rolling in the trough of the seas she floated for two days, without settling appreciably below her normal load-water

line, and finally stranded upon Cat Island, distant upwards of fifty miles to the southwestward of the place where she was abandoned. She remained a salvable ship until she took the ground on Cat Island. There she was dashed against the rocks, and sustained injuries, which resulted in her total loss (*pp. 153–154*).

It is admitted that the Navy Department took exclusive charge of the floating and repair of the "*Teresa*" and that the captors had no part or voice in these things or in her navigation after leaving Guantanamo or her abandonment at sea (*pp. xiv*).

Having been appropriated by the Secretary of the Navy for the use of the United States on July 6th, the "*Teresa*" and other captured property could not be sent in for adjudication, nor could they be surveyed and appraised and sold by the commanding officer present in the manner prescribed by statute* (*p. xiv*).

**R. S. U. S., Sec. 4615.* "The commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the log-book, with all other documents, letters and other papers found on board, and make an inventory of the same and seal them up and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court as witnesses, the master, one or more of the other officers, the supercargo, purser or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent, he shall select such port as he shall deem most convenient, in view of the interests of probable claimants, as well as of the captors. *If the captured vessel or any part of the captured property is not in a condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their report shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to such court, and subject to its order in the cause.*"

By his order of July 13, 1899, the Secretary of the Navy caused the "*Teresa*" and other captured property to be surveyed, inventoried and appraised by a board of naval officers (*p. xi, 1–3*). He did not, however, deposit the value of the prize property, or any sum whatever, subject to the order of any prize court, nor did he designate a district where proceedings should be had for the adjudication of the prize although the law made it his duty to do so.*

In due course, suit was brought by the captors. These proceedings were had in the manner prescribed by statute.†

The libel was filed by Admiral Sampson, who acted in his own behalf and in behalf of all officers and men of the Navy, who, serving under his command, participated in

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**R. S. U. S., Sec. 4624.* "Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement and inventory shall be sent to the court in which proceedings are to be had; and if taken afterwards, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. *In all cases of prize property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated, shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.*"

† *R. S. U. S., Sec. 4625.* "*If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States, shall be deposited with the assistant treasurer in or nearest to that district subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for the adjudication in any district. * * * The monition issued in either case shall be served on the attorney of the United States for the district and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified.*"

the captures. In this respect the practice adopted in earlier cases was followed (*Farragut vs. U. S., 22 Wall., 406*). After a recital of the facts, including the circumstances under which the prize property was captured and subsequently appropriated for the use of the United States, the libellant prayed: (1) that the "*Teresa*" and other property be condemned as prize; (2) that the Secretary of the Navy be ordered to deposit the value of the prize in the manner prescribed by law and (3) that the sum so deposited be distributed among the captors in accordance with law (*pp. i–iv*).

The United States and the Secretary of the Navy appeared and filed answers, or claims to the prize. They averred that neither the "*Teresa*" nor the other property in question was captured under circumstances which rendered them condemnable as prize. All material facts, set up in the libel, were admitted. (*pp. xiii–xvi.*)

Proofs were taken on behalf of both parties. These consisted of official reports and correspondence, on file in the Navy Department; the depositions of seven witnesses, produced by the libellants, and of three produced by the claimants (*pp. 1–176, Report of the Secretary of the Navy, 1898, Vols. I and II*).

The case came on for hearing upon the issue of "prize or no prize," and was submitted after oral argument, the record containing all pleadings, interlocutory proceedings, the proofs and briefs for both parties. By its decree the court below condemned as lawful prize of war, the "*Teresa*" and the guns, munitions and other property taken from her and other vessels of the Spanish fleet (*p. 177*), whereupon, the United States took this appeal (*p. 178*).

ARGUMENT.

The United States contends that the "*Teresa*" and other property described in the libel were not captured and were not condemnable as prize. This is based upon the following propositions:—

Inasmuch as the "*Teresa*" was a public armed enemy vessel, and when taken had sustained injuries which prevented her being immediately sent in for adjudication, she did not come within the provisions of law applicable to captures made as prize; and inasmuch as the United States did not actually float the vessel off the beach where she lay stranded and complete the temporary repairs made upon her until after the signing of the protocol of August 12, 1898, which terminated the active hostilities between the United States and Spain, she was not captured *jure belli*.

Inasmuch as the guns, naval stores, and other property condemned were taken from the "*Viscaya*," "*Almirante Oquendo*," "*Cristobal Colon*," "*Pluton*," and "*Furor*" (*pp. 99–110*), which were destroyed in the engagement, they were not captured in the sense in which that term is used in the prize act.

There is no foundation for these contentions, either in law or in fact.

THE "TERESA," WAS CAPTURED JURE BELLI ON JULY 3, 1898, AND WAS A PRIZE IN THE POSSESSION OF THE CAPTORS, WHEN APPROPRIATED FOR THE USE OF THE UNITED STATES. HENCE SHE WAS CONDEMNABLE AS PRIZE.

The word "capture" as applied to naval warfare and as used in the law of prize has been defined thus:

> *Bouvier, L. D., Vol. I, p. 284*: "Capture: The taking of property by one belligerent from another.

"To make a good capture of a ship, it must be subdued and taken by an enemy in open war, or by way of reprisals or by a pirate, and with intent to deprive the owner of it.

"Capture may be made with intent to possess both ship and cargo, or only to seize the goods of the enemy, or contraband goods, which are on board. The former is the capture of the ship in the proper sense of the word. * * *

"Capture is deemed lawful when made by a declared enemy lawfully commissioned and according to the laws of war, and unlawful when it is against the rules established by the law of nations.

"All captures, *jure belli*, are made for the Government."

Standard Dictionary, Vol. I., p. 282: "In marine insurance, *capture* includes every species of taking by force from without to which a vessel may be exposed during a voyage."

It cannot be denied that the "*Teresa*" was subdued in open war, being taken from a declared enemy.

The question as to what constitutes a capture within the meaning of our prize acts was passed upon by this court in the case of the "*Grotius*" (*8 Cranch, 456 and 9 Cranch, 368*). There the principal issue was, whether the vessel, libeled as prize, had been captured or not. It appeared that the "*Grotius*," an American vessel, while on a voyage which was unlawful, by reason of the existence of war between this country and Great Britain, was detained by the American privateer "*Frolic*." The master of the "*Grotius*" was ordered to go on board the "*Frolic*," where his papers were examined. The master of the "*Frolic*" sent one of his men on board the "*Grotius*" and told her master to proceed to Boston. The master retained all of the ship's papers and the command of his vessel and was allowed to navigate her into port.

The "*Frolic*" did not accompany her. On her arrival the "*Grotius*" was libelled as prize. Her officers and men testified that the man put on board by the "*Frolic*" came as a passenger, and conducted himself as such, that the filing of the libel was the first intimation given them that the "*Frolic*" intended to claim that she had captured the "*Grotius*." The master of the privateer testified that he put his man on the "*Grotius*" as prize-master, with instructions to libel the ship when she reached Boston. The man gave similar testimony. The claimants of the "*Grotius*" contended that the detention of their ship and the placing of one man on board, without positive notification to her master, that the "*Grotius*" was a prize and the man, the prize-master, did not constitute a capture. Washington, J., delivering the opinion of the court, said (*9 Cranch, 372*):

> "Upon the whole it is the opinion of the majority of the court that the validity of the capture of the '*Grotius*' as a prize of war is sufficiently established by the evidence, and the captain having acquiesced in the subsequent arrangement as to the mode of sending in the vessel, she ought to have been condemned to the use of the captors."

It cannot be denied that the "*Teresa*" was more effectually subdued than was the "*Grotius*," and that after surrender she was more securely within the possession of her captors. When the "*Teresa*" turned to run in shore she abandoned the fight. There was no way in which she could escape from the American force. Her officers and men had no hope of saving her from capture. Her flag was hauled down in token of surrender. All, or nearly all, of the survivors of her crew were made prisoners of war. It is true no prize crew was put on board of her, but inasmuch as she could not escape, it

would have been a useless piece of mummery to go through the form of appointing a prize-master and sending a prize crew from the United States ships. At the time of the "*Teresa's*" surrender, the three remaining Spanish cruisers were continuing the battle and making a desperate endeavor to escape. These had to be subdued. Furthermore, the libellant had to maintain the blockade of Santiago, and as soon as one of his vessels could be spared from the engagement, she was ordered to resume her station off the port. It would have been gross neglect of duty if the libellant or the commanding officer of any one of the United States ships had abandoned the engagement or the blockade in order to make an unnecessary show of securing the captors' rights in a prize, already securely theirs.

In short, the act of making a capture is a fact, and with reference to the "*Teresa*" that fact has been proved. Still counsel for the United States insist that in the case of a vessel-of-war, taken from an enemy, exceptional circumstances must appear to render the capture *de facto*, a capture *de jure*, namely: that the vessel must when taken be capable of being sent in for adjudication, forthwith, and without awaiting more extensive repairs than the captors are able to make with the materials at hand. A careful examination of the statutes and decisions does not disclose any clause or dictum, which by any possible interpretation could be taken to mean that, for purposes of prize, an enemy warship stands upon a different footing from an enemy merchantman. All provisions of the prize act apply equally and in like manner to captured enemy property of every kind, whether it be public or private; whether the vessels are taken afloat or after being run ashore; and whether the property or vessels, when captured, can be sent in for adjudication or not.

It is provided:

> (*R. S. U. S.*, § *4615*) "* * * If the captured vessel or any part of the captured property is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had: and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the Assistant Treasurer of the United States * * *."

Again:

> (*R. S. U. S.*, § *4625*) "If by reason of the condition of the captured property, or if because the whole of it has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication; or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced * * *."

During the civil war the Confederate war vessel "*Atlanta*" was subdued by the U. S. S. "*Weehawken*" and "*Nahant*" in an engagement fought in Wassau Sound. The "*Atlanta*" sustained great damage in the engagement, but was adjudicated like any other captured vessel and condemned as a prize. (*The "Atlanta," 3 Wall., 425.*)

Another case, of historic interest, and directly in point is that of the Confederate iron-clad "*Albemarle.*" (*Supreme Court of the District of Columbia—No. 146, District court.*) It appeared that the "*Albemarle*" was "captured and sunk" in the Roanoke River, on the night of October 27, 1864, by a picket launch under the command

of Lieutenant Cushing. The "*Albemarle*" was lying in the river some distance above its mouth and close under the guns of the Confederate shore batteries. Armed with a torpedo, the launch approached noiselessly, but just as the attack was made she was discovered, fired upon and destroyed. While sinking, however, she succeeded in discharging her torpedo under the "*Albemarle*," which tore a great hole in her side below the water-line and caused her to sink to the bottom. Several of the launch's crew were killed in the attack; but Cushing and the few survivors swam across the river and made good their escape. The "*Albemarle*" was afterwards raised by the United States and appropriated by the Secretary of the Navy for the use of the Government. She was appraised. The Secretary of the Navy deposited an amount equal to her value in the manner prescribed by law (*R. S. U. S., Sec. 4624*). Libel was filed, in the name of the United States, and proceedings were had in the manner provided by statute (*R. S. U. S., Sec. 4625*). Although the "*Albemarle*" was actually sunk and Cushing did not attempt to take or retain possession of her, she was condemned as prize. This precedent shows most clearly that even if an enemy war vessel has been sunk, which the "*Teresa*" was not, if she be recovered and appropriated by the Government and be found to be worth any sum over and above the cost of her recovery, she is to be treated as a prize.

While it is true that the "*Teresa*" sustained certain local injuries in the engagement from gun-fire, conflagration, and grounding on the beach, it is also true that at the time of her surrender and at all times thereafter, until her abandonment at sea, she possessed great value. This is proven beyond question by the appraisement made by the board of survey (*pp. 1–3*). It is true, likewise, that she was throughout that period a salvable ship.

Counsel for the appellant rely upon the opinion of this court in the case of "*Siren*" (*13 Wallace, 389, 396*), as support of their arguments to the effect that the "*Teresa*" was not captured under circumstances which would justify her condemnation as prize and that the conduct of the captors, subsequent to the engagement, was not such as to entitle them to prize. The facts in the case of the "*Siren*" were utterly different from those which we have before us, and nothing contained in the opinion has any applicability to the case at bar. It appeared that during the civil war the port of Charleston was beleaguered by military and naval forces of the United States, which for some time were held at bay by the Confederate forces, but, at length, the latter evacuated their fortifications and abandoned the city under cover of night. This became known to both United States forces on the following morning, and both immediately approached to take possession of the place. The U. S. S. "*Gladiolus*", which was one of the first of the blockading vessels to enter the harbor, was informed that a steamer had run the blockade on the preceding night and forthwith sent boats in search of her. She was found in a small river or creek, where her crew had opened her sea valves and set her on fire with the intention of sinking or otherwise destroying her. The men from the "*Gladiolus*" extinguished the flames and the "*Gladiolus*" towed her into shallow water. Later she was sent to Boston for adjudication, proceedings in prize were instituted in the district court, and she was condemned. The officers and men of the "*Gladiolus*" and other vessels of the United States fleet made claim for prize money, but it was held that the "*Siren*" was a joint capture by the army and navy, and hence the naval captors were not entitled to participate in the prize. The

decision of the district court was affirmed on appeal by this court. The opinion opens with a statement of the origin of the law of prize in England and in the United States, and makes the general proposition, which no one has ever denied, that all captures made *jure belli* are for the Government; also, that

> "All captures made without their (the government's) express authority inure *ipso facto* to their benefit. Whenever a claim is set up, its sanction by an Act of Congress must be shown. If no such Act can be produced the alleged right does not exist. The United States takes captured property, not as droits, but strictly and solely *jure reipublicae*."

In the present case there can be no possible excuse for the suggestion that the "*Teresa*" was a joint capture of the military and naval forces of the United States. It appears that she was subdued on high seas in a naval engagement, wherein the land forces of the United States took no part. The capture, being that of a public armed enemy vessel, made by vessels of the United States Navy, was most assuredly one made by authority of the United States. We concede that the capture, like all others, was made for the government and that the captors have no rights in the prize other than those given them by Act of Congress, but we do insist that on the facts presented and conceded, statutes of the United States, already quoted, entitle the captors to demand condemnation of the prize and a moite of her value. (*R. S. U. S.*, §§ *4615*, *4624*, *4625*, *4630*.)

It is contended on behalf of the United States that the capture of the "*Teresa*" could not be regarded as a completed transaction until September 23, 1898, when she was floated off the beach by the wrecking company and taken to Guantanamo; also that the capture could not be considered as one made *jure belli*, because active hostilities be-

tween the United States and Spain had ceased upon the signing of the protocol of August 12, 1898; also because Spain by that protocol had promised at a future date to relinquish its sovereignty over Cuba.

We contend that the capture became a completed transaction on July 3, 1898, and did not depend upon the floating of the vessel. Also that the war between the United States and Spain continued until December 10, 1898, when the Treaty of Paris was signed, and until then Cuba continued to be Spanish territory and hostile (*Dooley vs. U. S., 182 U. S., 222, 235*). Counsel for the United States disregard the fact that the United States treated the "*Teresa*" as captured property from the first, and from July 6th treated her as property which it had appropriated and owned and could dispose of as it pleased. It was never suggested that by lying stranded on the beach near shore she became Spanish property or Cuban property and such was not the case in fact or in law. In his work entitled "*Notes on the Principles and Practice in Prize*," it was said by Mr. Justice Story (*p. 29*):

> "And though when the jurisdiction has once attached it may be lost by a hostile recapture, escape, or voluntary discharge, yet it remains, *notwithstanding the goods are landed, for it does not depend upon their local situation* AFTER CAPTURE; *but the court will follow the goods or their proceeds* with its process wherever they may be found or under whatever title acquired. * * * So if a prize be lost at sea, the court may, nevertheless, proceed to adjudication either at the instance of the captors or of the claimants. (*The Peacock, 1 Rob. 271, 284.*) *So, although the property may be actually lying within a foreign neutral territory, the court may proceed to adjudication;* so, although the property has been sold by the captors or has passed into other hands. (*The Falcon, 6 Rob. 194; The Pomona, 1 Dodson, 25.*)"

The captors did not lose their rights in the prize by voluntary abandonment. From the close of the engagement until the wrecking force, employed by the Department, took charge of her, the "*Teresa*" remained, securely, in the possession of the captors. As soon as possible, her condition was ascertained and everything, necessary, was done to preserve her from damage or molestation. More than this the captors could not do, for immediately after news of the victory was received and before the captors were fully advised of the condition of the stranded vessels, and knew whether they could be sent in for adjudication or not; the Secretary of the Navy intervened and by his contract with the wrecking company appropriated them for the use of the United States. After this the captors could not sell the prize property, or even survey and appraise it. It remained for the Secretary of the Navy to do justice to the United States and the captors. It is immaterial that he did nothing for over a year. It was not incumbent upon the captors, nor would it have been proper for them to show him what was his duty and demand that he do it.

In the respondent's answer (*p. xiv*), mention is made of the fact that the floating and repairing the "*Teresa*" and preparations for bringing her to this country were conducted in the name of the United States, and at its cost. This did not extinguish the rights of the captors. (*U. S.* v. *The* "*Albemarle*," *supra.*) In appropriating the prize and arranging for her recovery the Secretary of the Navy acted voluntarily, within the scope of his authority and without the knowledge of the captors. They could not do otherwise than yield to his superior authority and the paramount right of the Government.

In the answers of the claimants (*pp. xiii, xv*), and by the brief now submitted on behalf of the United States,

it is asserted that the "*Teresa*" was "sunk or otherwise destroyed" and that the libellant and his officers and men are entitled to receive bounty, on that account, but are not entitled to prize money.

The statute which regulated the allowance of bounty for the destruction of public armed enemy vessels should not be confused with the statutes relating to captures made as prizes. It reads:

> "(*R. S. U. S.*, § *4635.*) A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars if of equal or superior force, to be divided among the officers and crew in the same manner as prize money * * * * *."

The evident intent of this was that it should not apply, except in cases where the vessel subdued became a total loss, by reason of injuries sustained in the engagement, so that there remained no property to be adjudicated or appropriated for the use of the Government. Bounty was allowed, primarily as a reward for injury done the enemy, secondarily, as a reward for bravery. No bounty is allowed for the destruction of enemy merchantmen, for the loss of such would not inflict the same degree of injury upon the enemy or involve the same display of bravery on the part of the victors. The section does not apply to facts such as those presented by this record. We have seen that the "*Teresa*" was not "sunk" in the engagement, or thereafter. When last seen on the reef at

Cat Island she had not sunk. She was damaged in the engagement but not destroyed. The appraisement made by order of the Secretary of the Navy, the libellant's evidence, and even the respondent's evidence, all show that as she lay stranded on the beach after the battle she possessed great value. After being appropriated for the use of the United States she was floated, taken into port, and repaired. She put to sea, using her own steam. She covered five hundred miles of her voyage to the United States and finally rode out a severe storm under most difficult conditions. Her destruction occurred because she was abandoned at sea by representatives of the Navy Department, and there was no one on board to cast anchor and prevent her from drifting ashore.

The claimants below offered in evidence extracts from certain reports entitled "prize lists," sent to the Secretary of the Navy by the commanding officers of the United States vessels, which took part in the engagement (*pp. 166–171*). These are collected under a general heading entitled "Applications for Bounty Money". The heading forms no proper part of the record, having been interpolated by counsel for the United States. The lists contain expressions, such as these:

> "* * * the sortie and destruction of the Spanish fleet, the '*Infanta Maria Teresa*,' '*Viscaya*,' etc. * * *"
>
> "* * * the destruction of the following Spanish vessels: '*Infanta Maria Teresa*,' '*Viscaya*,' etc. * * *"
>
> "* * * the destruction of the Spanish squadron composed of the '*Infanta Maria Teresa*,' '*Oquendo*,' etc. * * *"

It is argued on behalf of the United States that the use

of the word "destruction" as applied to the Spanish fleet is proof that the "*Teresa*" was destroyed within the meaning of §4635, R. S. U. S., that her captors admitted that she was destroyed, and are bound by that admission. This like other arguments of the appellant, totally disregards the facts. The vessel was not destroyed. The issue of prize or no prize is founded upon a condition and not upon a theory. If it were true that one or more of the captors had deliberately expressed the opinion that the "*Teresa*" was destroyed in the engagement, such an opinion could not prevail for an instant against the facts now before us. The intention or opinion of the parties participant is never material.

Had the "*Teresa*" been lost while in the custody of the captors, they would have had to bear their loss. Where a prize is lost through the negligence of her captors, they are answerable for it to their government or to any claimant who establishes a right to the vessel. (*Story—Notes on the Principles and Practices in Prize, p. 36.*) But such is not our case. The "*Teresa*" was appropriated by the United States and taken from the custody of her captors while a prize of great value. When lost she was completely within the possession and control of the Navy Department's representatives. She was listed, officially as a vessel of the Navy. Her loss must fall upon the United States, like that of any other public vessel. (*Walker vs United States, 34 C. Cls., 342, 347.*) Upon her appropriation by the Navy Department, the right of her captors was converted from a right to share in the proceeds arising from the sale of the ship (*R. S. U. S., 4630*) to a right to share in a fund to be created by a deposit of money, made by the Secretary of the Navy (*R. S. U. S., 4624*).

THE ARMS, MUNITIONS AND OTHER PROPERTY TAKEN FROM SPANISH VESSELS WHICH WERE DESTROYED IN THE ENGAGEMENT, AND APPROPRIATED FOR THE USE OF THE UNITED STATES WERE CAPTURED WITHIN THE MEANING OF THE PRIZE ACT (TITLE LIV, R. S. U. S.) AND WERE CONDEMNABLE AS PRIZE.

The Spanish cruisers "*Viscaya*", "*Almirante Oquendo*" and "*Cristobal Colon*" and the torpedo boats "*Pluton*" and "*Furor*" were undoubtedly destroyed in the engagement by sinking, or by gun-fire and burning. This is shown by the official report. (*Report, Secretary of the Navy, 1898, vol. II., pp. 573–592.*) The libellant and the officers and men who participated in their destruction sued for and recovered by bounty on that account. (*Sampson vs. United States, 35 C. Cls., 578.*) It is contended on behalf of the United States that this recovery precludes the condemnation as prize of the equipment and stores taken from those vessels and subsequently appropriated by the government. The authorities offered by counsel for the United States in support of their proposition are dicta, contained in two decisions. (*Porter vs. U. S., 106 U. S., 607; The "Selma," 1 Tow., 30.*) In these bounty is spoken of as an allowance "in lieu" of prize and as "a substitute for prize itself." Taken by themselves these general expressions tend to support the appellant's argument; but when considered along with the statute (*R. S. U. S., §4635, supra*) it will be seen that they were used in a limited sense and have no bearing upon the present case. It is, undoubtedly, true that when an enemy war-ship has been destroyed in action, or thereafter by reason of injuries sustained in action, and there is nothing left to adjudicate or appropriate, bounty is the only allowance which the victors can receive, but a vessel and her equipment are not

one and inseparable; the vessel may be destroyed and her equipment saved and captured; or the vessel may be saved and captured and her equipment destroyed. If the vessel be destroyed the victors are entitled to bounty for her destruction as a reward for the injury inflicted upon the enemy and for their bravery; but if, beside the destruction of the ship, they succeed in taking valuable property, whether cargo or equipment, there is nothing to prevent them from asking that it be condemned. Section 4635, R. S. U. S., was not intended to operate as a repeal or qualification of any other provision of the prize act. In his opinion delivered in the case of Dewey *vs.* The "*Don Juan de Austria*," etc. (*See Record in Nos. 654–655, October Term, 1901, pp. 157–158*), it was said by the learned justice of the court below:

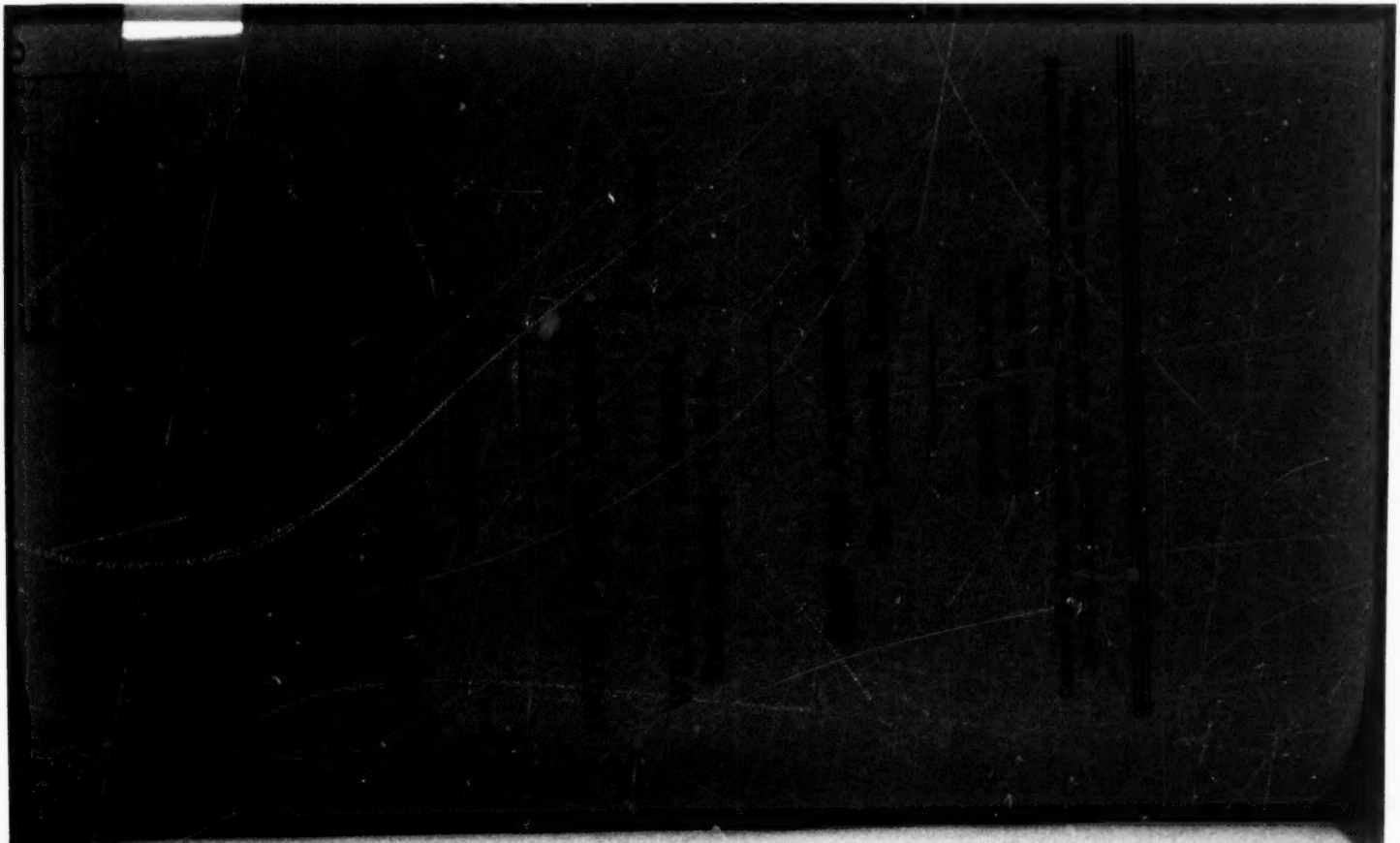
> "Bounty is given, in lieu of prize, only in the case "of a ship or vessel of war belonging to an enemy "which is sunk or otherwise destroyed or which it "may be necessary to destroy in consequence of "injuries received in action. It is proportioned not "to the value of the ship or of its armament or muni- "tions, but to the number of persons on board of her "at the commencement of an engagement. While "it may be true that the original idea was that the "amount so ascertained would be a fair substitute for "the prize itself and such idea may not have been "far wrong in the days of wooden vessels of war, yet "in these days of steel armored cruisers and battle- "ships, with all of their expressive appliances, the "highest amount of bounty allowed is very incon- "siderable, compared with the value of the ship "sunk or destroyed. It is not an equivalent of the "prize. There is, therefore, no reason, arising out "of the amount paid as bounty that would justify "the claim that in fairness, such reward should be "exclusive. The reward is apparently bestowed for "the injury done to the enemy in the hope of fight-

" ing power; it matters not how valuable may be
" the appliances that go down with her or that are
" involved in her destruction. If the vessel were
" captured, the cargo or outfit and appliances would
" enter into the estimate of the total value. I find
" nothing in the statutes to prohibit the condemna-
" tion in prize of her property captured or taken from
" ships, sunk or destroyed, in addition to bounty
" paid for the destruction of the ship, and am of the
" opinion that it should be allowed."

We submit that the decree of condemnation should be affirmed.

McCAMMON & HAYDEN,
Proctors for the Appellee.

JAMES H. HAYDEN,
Advocate.



IN THE

Supreme Court of the United States.

October Term, 1902.

THE UNITED STATES, *Appellant*,
v.
WILLIAM T. SAMPSON,
Rear Admiral, United States Navy. } No. 273.

BRIEF OF COUNSEL FOR CERTAIN CAPTORS.

This is an appeal from the decree of the Supreme Court of the District of Columbia, sitting as a District Court of the United States (R. S. D. C. § 762), condemning as prize the Spanish vessel of war *Infanta Maria Teresa* and certain other property captured at the battle of Santiago, July 3, 1898. The action was brought by Rear-Admiral William T. Sampson on behalf of the officers and men of the fleet under his command.

Answers have been filed on behalf of the United States and of the Secretary of the Navy. There is no very substantial difference in regard to the facts, but the issues disclosed in the pleadings are as to the legal consequences of the facts established.

The consideration of this case will be greatly aided by an exact statement of the facts contended for on behalf of the captors. The statutes giving jurisdiction to the court will then be set forth. Then the issues will be stated and discussed.

The Facts.

[The references by pages to the record in this case are designated Rec.; those to the Appendix to the Report of the Bureau of Navigation for 1898, Vol. II of the Report of the Secretary of the Navy, are designated App.]

1. On July 3, 1898, a state of war existed between the United States and the King of Spain, and the libellant was in command of the United States naval force on the North Atlantic Station (Rec. xiii; App. 167, 506).

2. An engagement took place on that date between the naval force of the United States, under command of the libellant, and a Spanish fleet consisting of the *Cristobal Colon*, *Infanta Maria Teresa*, *Viscaya*, *Almirante Oquendo*, *Pluton* and *Furor*, resulting in the defeat of the Spanish forces (Rec. xiii, xiv; App. 506).

3. All the vessels named, excepting the *Infanta Maria Teresa*, were completely destroyed as the result of this engagement, by gun fire, by internal explosions, by being run ashore, or by sinking (Rec. xiii, xiv; App. 573 *et seq.*; Findings of Court of Claims in Bounty Cases; *Sampson* v. *United States*, 35 C. Cls. 578).

4. The *Infanta Maria Teresa*, under the close pursuit and severe gun fire of the American fleet, was run ashore by her own officers and grounded in a small cove (App. 577) about five miles (App. 577, Rec. 3) from the entrance to the harbor of Santiago (App. 517, 526, 531, 538, 561; Rec. 32; see also plates following App. 572).

5. An examination was made of the *Maria Teresa* by libellant on the 5th of July, 1898, and the conclusion reached that she was practically uninjured below the water-line and might be floated and repaired (App. 573). A board of survey was appointed by libellant on the 6th of July, which examined the vessel on the morning of the 7th, continuing the examination on the 9th, and reported on the 13th (App. 573) that "It is possible and desirable to float the *Infanta Maria Teresa*" (App. 577).

6. The vessel rested easily, bearing upon the bottom, which was of firm coral sand, throughout the greater part of her length. She rested nearly upright at the water line, differing from the normal load water line only in being somewhat higher at the bow. (See report of board, App. 574; first, second and third plates following App. 572; Capt. Chadwick's testimony, Rec. 32, 35, q. 26; Lt. Comd'r Staunton, Rec. 45, qq. 11–13, p. 51, qq. 13, 14; Chief Engineer Sims, Rec. 61, qq. 26, 27; Lt.-Comd'r Harris, Rec. 86, 87; Commander Mason, Rec. 116, 117; Commander Rodgers, Rec. 128; Lieut. Capehart, Rec. 140.)

7. The structural stability of the vessel was not to any considerable degree injured (App. 577; Rec. 33, 37, 45, 46, 62, 89, 116). The hull was intact (App. 577, Rec. 84, 140, 150) except for a hole made by a rock on the shore protruding through the bottom of the vessel forward (Rec. 34, 46, 62, 70, 116, 129). The armor and protective deck were in good condition (Rec. 84, 90, 116, 129). The main boilers and engines were in good condition (App. 576, Rec. 33, 63, 85, 88, 129, 140, 150), but were subject to some corrosion by the presence of water which filled the vessel to within six inches of the tops of the cylinders (App. 576, Rec. 34, 56, 63, 150). The lighter portion of the vessel above the protective deck, but not the turrets, was substantially destroyed (App. 575, 576, Rec. 45, 56, 66, 70, 129, 141, 150).

8. No doubt was entertained by any of the naval authorities as to the salvability of the vessel. (See statement of Admiral Sampson, App. 573; report of board, App. 577; Capt. Chadwick's opinion, Rec. 33, qq. 13–15, 19, p. 36, qq. 37–39; Lt.-Comd'r Staunton's opinion and statement of general consensus, Rec. 45, q. 19, p. 46, qq. 24, 25; Chief Engineer Sims, Rec. 67; Commander Mason, Rec. 117; Commander Rodgers, Rec. 129; Constructor Hobson, Rec. 150.)

9. A contract was made on the 6th of July, 1898, by the Navy Department (see Rec. 15 for contract) for floating and repairing the Spanish vessels and their delivery to the Navy Yard at Norfolk and work was begun upon the *Maria Teresa* under this contract and under the supervision of a representative of the Navy Department designated by the Secretary of the Navy (App. 595, 598, Rec. 16, 18–26, 70, 83), early in July (Rec. 151) as she lay on the beach and continued until the 23d day of September, 1898, when the vessel was towed off and taken to Guantanamo Bay, using her own steam (App. 600; Rec. 4).

10. The operations above set forth were conducted at all times by contractors engaged by the Navy Department, who were supervised by the naval representative of the Department. (See Contract, Rec. 16; reports to the Department, Rec. 18–20, 24–26, 26–31, App. 594–601; orders from the Department, Rec. 18, App. 599; testimony of Lieut.-Commander Harris, Rec. 83, 92, 93; Constructor Hobson, Rec. 151; Captain Chester, Rec. 70, 76, 78, 80.)

The libellant exercised no control over these operations. His only relation to this work up to August 12, 1898, was that he was commander-in-chief of the United States Naval Forces on the North Atlantic Station, including the officers of the Navy and naval operations in these waters. He left the vicinity on August 12, 1898 (Rec. 40). After this date the libellant had no relation to this work (Rec. 18–31).

11. After reaching Guantanamo Bay, work was continued on her under the same authority until October 29, 1898, when she started for the Navy Yard, at Norfolk, in the United States, in charge of the contracting company engaged by the Navy Department, under the direction of the officers placed in charge of the operations by the Secretary of the Navy (Rec. 23–26, 93), under tow of the *Vulcan*, a vessel of the United States Navy, and the wreck-

ing tug *Merritt*, belonging to this contracting company (Rec. 6, 7, 25), using also her own steam (Rec. 6, 7), and in company with the *Leonidas*, a vessel of the United States Navy. While on the voyage to the United States a storm was encountered, and under the authority of Lieutenant-Commander Harris, commanding the vessels named, an officer of the United States Navy, the *Teresa* was abandoned at sea November 1, 1898 (Rec. 8, 10–14, 26–31), and, riding through the storm with her flotation uninjured, drifted fifty-five miles (Rec. 14) and was wrecked off Cat Island (App. 602) upon a reef running parallel to the ship. This penetrated the ship's bottom practically its entire length and left the ship floating practically at her normal load water line, supported on the reef, but nearly intact as a structure (Rec. 153).

12. The vessel, while still beached, was taken for, and appropriated to, the use of the United States and continued in the possession and control of the United States up to the time of her final loss (conclusion of fact from the foregoing).

13. Guns and other war material and cash were taken from the vessels named in the second paragraph hereof by the United States and appropriated to the use of the United States (Rec. ii, xiv, 177).

14. Actions have been instituted in the Court of Claims for bounty under § 4635 of the Revised Statutes on account of all the vessels named in the second paragraph hereof other than the *Infanta Maria Teresa*, and bounty has been allowed under that section for the destruction of said vessels (see decision of Court of Claims) and paid (H. R. Doc. 354, 56th Cong. 2d. Sess.; 31 Stat. L. 1052).

15. The appropriation to the use of the United States of the *Infanta Maria Teresa* and the other property referred to in paragraph fourteen prevented any part of it being sent in for adjudication to any district court of the United

States. The Secretary of the Navy did not, within three months after the capture, designate a district for the institution of proceedings (Rec. iii, xiv).

The Statutes.

The statutes affecting this case are all found in Chapter LIV of the Revised Statutes, the provisions of which are nearly all reenactments of the act of June 30, 1864 13 Stat. L. 306. The following sections are chiefly material:

§ 4613. "The provisions of this Title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States."

§ 4624. "Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement and inventory shall be sent to the court in which proceedings are to be had; and if taken afterward, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize-property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause."

§ 4625. "If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States,

shall be deposited with the assistant treasurer in or nearest to that district, subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the insitution of proceedings, the captors may institute proceedings for adjudication in any district. And if in any case of capture no proceedings for adjudication are commenced within a reasonable time, any parties claiming the captured property may, in any district court as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified."

§ 4630. "The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels."

§ 4634. "Whenever a decree of condemnation is rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. The decree shall recite the amount

of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors, and one-half to the United States."

§ 4635. "A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

The Procedure.

The usual course in prize is that the prize property is taken into the custody of the court. The proceedings are then governed by §§ 4615 *et seq.* The property here claimed in prize was appropriated by the United States. The procedure in such cases is prescribed by §§ 4624 and 4625. So far as within his power that procedure has been followed by the libellant. The Secretary of the Navy failing to proceed in prize, the libellant as commander of the naval forces brought this action as provided by the sections named in the Supreme Court of the District of Columbia. The same course of procedure was

followed in the case of *David G. Farragut, Admiral, U. S. N.* v. *The Ship Metropolis*, reported in the Supreme Court as *United States* v. *Farragut*. 22 Wall. 406. So far as possible the precedents of practice in that case were followed in this.

The Issues.

The case below presented two issues involved in the proceedings leading to a decree of condemnation:

1. Is the *Maria Teresa* prize?
2. Is the property captured on sunken vessels prize?

The learned judge of the Supreme Court of the District of Columbia decided both questions in favor of the captors and entered a decree condemning both the *Maria Teresa* and the other property as prize, but reserving matters of distribution, this being in accordance with the usual practice in prize cases. His opinion concerning these questions was rendered in the *Dewey* case and is printed in the record of that case, no. 309, pp. 147–159.

The case comes to this court on an appeal by the United States from this final decree of condemnation.

Is the Maria Teresa Prize?

The facts relative to this question have been stated above with exactness. In general they are not disputed. It appears that the vessel was beached as the result of the pursuit and gun-fire of the vessels of the libellant's command; that she rested on the beach slightly above her ordinary water line in the bow and at about her ordinary water line astern and that as she rested there it was apparent that she could be floated. Under these circumstances she fell into the hands of libellant as commander of the fleet of the United States and was then appropriated by the United States.

Capture the First Essential.

"Prize is generally used as a technical term to express a legal capture," said the Federal Court of Appeals in *Miller* v. *The Ship Resolution* (2 Dallas, 4). The first section of Title LIV, of the Revised Statutes, § 4613, says: "The provisions of this Title shall apply to all captures made as prize." § 4615 refers to the "vessel making the capture" and to the "captured property." So throughout the Title in regard to prize the word "capture" appears everywhere in §§ 4616, 4617, 4620, 4624, 4625 and numerous other sections, as indicating the first essential of prize.

In order to sustain a libel in prize, it is first necessary to show a capture.

Was this Vessel Captured?

To a capture, these things are necessary:

(*a*) A subject of capture—here the enemy's vessel.
(*b*) A capturing force—here the libellant's fleet.
(*c*) The taking of the subject of capture from the possession of the enemy into the possession of the captors—here accomplished by driving the vessel upon the beach and under the control of the captors.

That the control was complete is shown by the fact that the vessel was repaired, floated and carried into a harbor controlled by the United States.

After the battle of Santiago was over, the *Maria Teresa* was no longer in the possession of the Spaniards; she was in the possession of the fleet of the United States. She had been taken from the Spaniards by the United States Navy; she was under the control of these captors. It is true that she was in such condition that some labor and skill was required to move her and make her a fighting

machine again, yet none the less the capture from the Spaniards and the possession of the United States were complete. Such capture, made under the laws of war, constitutes prize.

A theory has been constructed by the ingenuity of counsel that the *Maria Teresa* was not captured until she was hauled off the beach; that that did not occur until after the protocol and consequently that the capture was not made in war. This theory was not thought of at the hearing below and is an instance of the extremity to which counsel is forced by the adverse logic of the court below. The capture was made when the vessel itself came within the power and control of the United States. The availability of the captured property for use was advanced by hauling the vessel off the beach and floating her, but she was just as much captured and in the possession of the United States on the 5th of July as she was on the 23d of September.

A Completed Appropriation.

After the capture, under ordinary conditions, another event occurs—delivery of the captured property into the possession of a prize court for adjudication. This did not occur in this case, but an event occurred which is made by statute an equivalent.

It has already been seen that by §§ 4624 and 4625 of the Revised Statutes, captured property may be taken for the use of the United States, instead of being delivered to the prize court. The exact form of language in these sections varies where the fact is referred to. The language of § 4624 is, "taken for the use of the United States"; in § 4625, in one place, "appropriated to the use of the United States," and in another, "taken or appropriated for the use of the United States." This taking or appropriation is by the statute made in all respects the

equivalent of the delivery of the *res* to the prize court. The money value of the prize, by R. S. § 4625, heretofore quoted, which should be deposited by the United States, stands in place of the prize. An action similar to a libel against the vessel itself, may be instituted, under this section, to fix the rights of the captors.

In the court below, it was conceded that the appropriation by the United States was here completed. It is difficult to see how any other position could have been taken. The facts are exactly stated on this point in this brief (p. 4) and detailed references are given to the evidence showing this. The Navy Department took the *Teresa* under its control, appointed its representatives to supervise the operations on her, made a contract for floating her and assumed entire charge of directing her repair and later movements. She was lost while under the officers and contractors placed in charge of her by the Department. She was not towed off the beach until more than a month after the libellant, Admiral Sampson, had left the vicinity and she was lost over two months after he left. The appropriation by the United States was complete and long before her loss she was as much in the possession of the United States as if the Government had received her at the Norfolk Navy Yard. The United States, having had the possession of the prize property, captured by the libellant's command, can not deny the appropriation.

Whether the prize property be delivered to a prize court and sold, or be appropriated by the United States, the result of the naval operation is the receipt of a thing of value; in the one instance it is sold at public sale, in the other, it is sold to a paramount purchaser upon a fair valuation. The bodily possession of the vessel upon appropriation by the United States makes the rights of the captors complete and condemnation in prize must follow.

Illustration of the Right.

The soundness of this position is well illustrated by supposing the existence of somewhat different conditions. Had the *Maria Teresa* been a private Spanish vessel, beached in an effort to escape from capture after the violation of blockade, floated by the action of the Secretary of the Navy and taken to a prize court, it is at once clear that no question ever could have been raised as to the jurisdiction of the court. There would have been in the court a *res* for adjudication, arriving in court by reason of her Spanish character, her violation of international law, and her capture by the naval forces of the United States. Condemnation proceedings could have been instituted by the United States or by the captors under Revised Statutes, § 4625. A further provision of the same section, had neither the United States nor the captors moved, would have granted the right, known also to British prize law, to the owner of the vessel claiming neutrality or innocence otherwise, to move for a monition to show cause or to institute a suit for restitution. The presence of the vessel itself would have been an all sufficient answer to any contention that she had not been captured and the ability to sell the vessel and turn the proceeds over to the disposition of the court would have prevented any question as to the existence of the valuable *res* which is at the basis of the right of prize.

None of the conditions thus supposed differentiating such a case from this, is of the slightest legal materiality. In the case supposed the vessel was of a private ownership. A prize tribunal must have been open to settle title to the vessel and to permit a dispute by the vessel owner as to the right of prize; yet there is no difference in American prize law between a public war vessel of the enemy and a private commercial vessel, in regard to jurisdiction of the prize court. Cases arose in the civil war of

condemnation of the enemy's vessels of war such as *The Atlanta*, 3 Wall. 425. It is useless to point out that the absence of a possible claimant might under some conditions make such procedure unnecessary; that does not effect the jurisdiction of the prize court or any other right granted by statute.

The absence of the vessel is immaterial since the appropriation by the United States of any prize, public or private, is made by statute equivalent, as we have seen, to the delivery of the vessel itself.

Nor is the loss of the vessel after the appropriation and its consequent absence from the court a varying circumstance of any legal importance. It is immaterial whether the loss occurred a day or ten years after the appropriation. The appropriation fixed the responsibility of the United States to the captors; subsequent acts could not lessen their rights. When the Government appropriated the vessel, then the captors' right was perfected. After a sale and equally after an appropriation, it is immaterial to the captors what becomes of the vessel. Title passed to the United States upon appropriation, and the United States could use, lose or destroy the vessel without affecting the captors' right.

Captors take the risk of loss when the property is in their own possession, before delivery to judicial custody; when the United States appropriated it, the risk became that of the United States and the burden of the loss was thus transferred to those actually responsible for it.

Was the Teresa "Sunk or Otherwise Destroyed"?

The existence of a statute granting a reward where no capture results from a successful naval battle, but, instead, the destruction of the enemy's vessels, is urged as a reason for denying the right of prize in this case. It

seems to be conceded that the conditions in this case are such that either bounty or prize money is granted. The government's position is apparently that, since the grant of bounty is "a substitute for the prize itself" (*The Selma*, 21 Fed. Cas. 1046) or "in lieu of it" (*Porter* v. *United States*, 106 U. S. 611), where there is no prize, prize money is not due when bounty is granted and that bounty is here granted. We readily accept the necessarily correlative position that bounty is not due for destruction of a vessel where prize money is granted for its capture and shall show that the bounty statute fails to include such a case as this. When that is proved our learned opponent's logic results in the admission of a grant of prize money to the libellant.

§ 4635, already quoted, gives a bounty for each person on board a vessel of the enemy "which is sunk or otherwise destroyed" in an engagement. It can not be contended by the United States that this vessel was destroyed, because all authorities agreed after the battle that she was a salvable vessel and she was actually saved.

Nor can it be contended that she was sunk. Sinking implies going down. The facts here are that, so far as there was any difference between her normal position and her position after beaching, she was slightly raised at the bow. The vessel was beached and, in beaching, a hole was stove in the bottom. She rested on the beach at substantially her normal level. There was no sinking. The answer is complete and condemnation should follow.

But (even if it should be admitted for the sake of the argument that the *Maria Teresa* was sunk) the description of a vessel "sunk or otherwise destroyed" does not include a vessel sunk, not destroyed, but later saved. The form of expression classes sinking as one form of destruction; "otherwise" destroyed implies that the alter-

native "sunk" means in some wise destroyed. "Sunk or otherwise destroyed" is equivalent to "destroyed by sinking or otherwise."

Not only the terms of the statute demand this meaning but its reason requires it. A successful issue of a naval battle is either the capture or destruction of the enemy's vessels; capture is where a vessel comes into the hands of the captors; destruction is where the victory is equally complete, but no vessel accrues to the captors. In this case the vessel came into the hands of the captors and thence to the United States; it was not destroyed.

If a vessel is captured, the reward is measured by its value in the form of prize-money; if destroyed, by an arbitrary statutory rule. The prize-money is the primary reward derived from the vessel itself, if captured; the bounty, under § 4635, is a reward for an equal degree of gallantry where the result was equally fatal to the enemy, but where no vessel is acquired for condemnation. The two grants are exclusive of each other; they can not both be granted for the same vessel; between them they cover the entire results of the successful sea fight.

Bounty Not Granted Without Destruction.

The correctness of our contention appears by supposing that the American fleet had sailed away from the coast of Cuba after the battle, and that the Spaniards, again in possession of the *Teresa*, had floated and restored her and used her in the Spanish navy again to fight American ships. Could bounty be claimed on this vessel because "sunk or otherwise destroyed" when it was actually doing battle for the enemy? Such a claim would be justly resisted. Or if sunk again in later battles and again raised, could bounty be claimed for a second or even a third "destruction"?

Through the conduct of these captors in action, the

United States acquired this vessel; it held it as captured property and can not consistently do that and at the same time maintain that the actual captors did not take, but destroyed, the vessel.

The Ascertainment of the Fact.

The Government has introduced official reports of officers serving under the libellant, in which they include the *Maria Teresa* with all the other vessels of the Spanish navy "destroyed" on the same day. However admirable the ingenuity of the argument, this court in deciding the case will deal with facts and not with words. It will not shift the judicial responsibility of definition of the terms of this statute to naval officers. These had completely discharged their responsibilities when they destroyed the power of the enemy's fleet, whether by destroying or by capturing the vessels. Statutory definition is a judicial and not a naval duty.

The fallacy of much of the defendants' argument is in confounding the existence of the fact of capture with the ascertainment of that fact. The vessel was captured, not destroyed, on July 3, 1898; it was not ascertained whether she was captured or destroyed until it was found whether she could be saved as a vessel. The ascertainment of the fact was delayed; the delay in determining the fact made no change in the fact. That she was destroyed is positively disproved by the fact that she was hauled off and taken into port; that she was captured was proved by the same fact. The Government had the vessel in its possession as a vessel; it is folly in the face of this fact to say that she was destroyed.

Precedents.

Many judicial precedents can not be expected in a case of this sort, but one exact precedent is found in this court

in the case of the *United States* v. *The Ram Albemarle*, No. 146. The facts in this case are facts of history. The *Albemarle* was blown up at her wharf and sunk. She was raised, appropriated by the United States, appraised and condemned in prize in the Supreme Court of the District of Columbia. The case was not contested; the decree entered there was not appealed from. Subsequent litigation arose over the same subject and resulted in a report of the proceedings in the original condemnation in the case of *Swan* v. *United States*, 19 C. Cls. 51. The importance of this case is in the fact that the United States accepted the rule then which it now disputes.

The Court Below.

The learned and lamented judge of the Supreme Court of the District of Columbia, in his opinion upon a similar branch of the *Dewey* prize case (see the record in No. 309), thus rested his decision:

"In behalf of the United States it is urged that those vessels, so far as the act of the United States fleet affected them, were sunk in Manila Harbor May 1, 1898; that such was their status then, and that the subsequent act of the Navy Department in raising and repairing them did not affect or change that status. And it is insisted that the libellant is not entitled to have an adjudication in prize, but is only entitled to bounty under the provisions of § 4635, R. S."

(Here the section is inserted.)

"The special attorney for the United States has supported his contention most ably and ingeniously by brief and argument, in which he goes into the history of bounty legislation, and shows that the libellant officially reported these vessels as destroyed, and that for other vessels also reported destroyed, shown by the testimony to be susceptible of being raised, although not to such good advantage, the libellant has claimed and collected bounty. It is true that they were sunk and that efforts were made to destroy them by burning, but the burning

was only partial because the vessels were submerged, and the sinking was only temporary and not beyond recovery. That they were raised and repaired and are now in the service of the United States are facts that seem to prove that they were not destroyed, but captured. Cavite arsenal was captured immediately after the battle of Manila, and these vessels, whose principal injuries were not from gun fire but from flames, came into possession of the Navy. They were then easily susceptible of being raised, but the necessary pumps and other appliances were not at hand. Had they been raised and repaired without delay the case would have been plainly one of capture. Were they 'sunk' in the sense in which that word is used in the statute? The expression is 'sunk or otherwise destroyed,' and the sense appears to be 'destroyed' by sinking or otherwise, so as to be beyond recovery, valueless to the victor or to the conquered. The bounty appears to be a reward for the injury done the enemy, in lieu of the compensation that in case of capture might be derived from condemnation of the prize, and it was not intended to be paid for mere temporary disablement that could be readily remedied. Suppose that this historic naval battle had not resulted in more than the overwhelming of the Spanish fleet; that Cavite had remained in the possession of Spain, and that Spain had raised these vessels and restored them to her navy, could it be contended that they had been 'sunk or otherwise destroyed' by the fleet under Admiral Dewey, and that he, his officers and men were entitled to bounty? The construction of the statute to me seems to be without difficulty."

It is submitted that the *Infanta Maria Teresa* was captured by the naval force commanded by Admiral Sampson and was appropriated by the United States. Consequently a decree should be entered for her condemnation in prize and for the distribution of one-half her value to the captors.

Property Captured From Destroyed Vessels.

The second branch of this claim is for guns taken from the vessels in the Spanish fleet, including both the *Teresa* and those which were destroyed, and cash found on the vessels. Three different questions are presented:

(1) Are guns taken from the *Teresa* prize?
(2) Are guns taken from the destroyed vessels prize?
(3) Is the cash taken from the destroyed vessels prize?

The Guns.

The first presents no special difficulty. If the *Teresa* herself is prize, then the guns also are prize. If the *Teresa* is held not to be prize, but is declared to have been destroyed, her guns must follow the same rule as those on the other vessels, and the first question merges into the second.

In answer to the second question, the Government asserts that guns attached to the vessel form a part of her equipment, and the reward granted by law to the captors is determined by the fate of the vessel itself, even if they are saved. Consequently, it is said that if bounty is awarded for the destruction of the vessel, the guns which are recovered must go to the United States without distribution of prize money to the captors.

All rights to the distribution of prize money and bounty rest upon the statute; every claim must be founded upon the statute and every defense must be determined by the test whether the statute either omits or prohibits the grant claimed. The statute itself is the soundest guide; that relieves this question of embarrassment.

Capture Creates Prize.

The first section of Title LV, "Prize," R. S. § 4613, declares that the provisions of this title, which includes

the section governing distribution of prize money, shall apply to all captures made "by authority of the United States." All the remaining sections of this chapter, in referring to the captured property, recognize that this may be either a vessel or other property. Thus, in § 4615, the documents are to be secured both of the ship and cargo. In certain conditions, a survey shall be had "of the captured vessel or any part of the captured property." By § 4622, duties are imposed upon the prize commissioners "as soon as any prize property comes within the district." They are to make "their own inventory of the prize property," and they are to report "if the captured vessel or any of its cargo or stores may be useful to the United States." By § 4623, the marshal is to keep safely "all prize property." § 4624 makes provision "whenever any captured vessel, arms, munitions or other material are taken for the use of the United States." By § 4630, "the net proceeds of all propery condemned as prize" shall, under certain conditions, be decreed to the captors. Thus, throughout the chapter, a careful reading will show that it is not captured vessels alone which are to be condemned as prize, but it is captured property. Such property may be vessels; it may be their equipment or their cargo Whatever may be so captured is subject to the same disposition, since the language of § 4613 creates a uniform rule for all prize property.

Guns from the *Colon*, the *Viscaya* and the *Almirante Oquendo* were saved, while the vessels were destroyed. The guns were captured by the libellant's fleet and are in the possession of the United States because so captured. The Government, with the property in its possession, can not deny the capture, and this must result in condemnation, since the statute makes capture the sole test of the right of condemnation in prize.

No Implied Repeal.

The Government meets this plain and straightforward application of the words of the statute by the argument that the grant of bounty by R. S. § 4635 for the destruction of a vessel excludes a grant of prize money for the capture of any portions of the destroyed vessel's outfit which might have been saved. This argument, when reduced to its essentials, is that § 4635 impliedly repeals the other provisions of the same chapter making prize of such property. This contention is easily seen to be unsound. Repeals by implication are not favored, and a repeal of one portion of a statute by another portion of the same statute can not be implied; rather are they to be reconciled. If two parts of a statute can stand together, the statute must be construed to give force to both. These are elementary principles of construction. *Rodgers* v. *United States*, 185 U. S. 83. Here an easy reconciliation is effected. The bounty for the destruction of the vessel may be received by the captors, while the prize money should be decreed them for the capture of its armament. We rest our claim upon the sound principle of a plain reading of the statute itself.

The reasons impelling this enactment by Congress are all upon the surface of the statute. The primary reward for a successful naval combat is prize money derived from the property captured. This depends upon the existence of a *res* to be sold or appropriated by the Government, the value of which is to be distributed to the captors to such an extent as the law may provide. Where such a *res* exists, the jurisdiction of the prize courts attaches and the right of the captors to a distribution follows. Bounty is granted, as we have seen, where the gallantry and success were both as great, but where the vessel itself, the chief subject of prize, was destroyed.

Therefore, to determine whether any prize money is

due, the first question is whether there is captured property; if so, prize money accrues. Here this condition exists.

Bounty is granted (R. S. § 4635) for the destruction of "a ship or vessel of war." This section says nothing about cargo, armament or equipment. This grant does not take away the right to share in prize money derived from the sale of such portions of the vessel's equipment as may be saved.

A Crucial Test.

The possibility of question in the adjudication of this case comes alone from the fact that the United States took possession of these guns. Had they been delivered to a prize court and sold at auction, no shadow would ever have arisen over the right of the captors to one-half the proceeds of the sale. The appropriation by the United States takes the place of the judicial sale, and the value of the property furnishes the measure of the fund from which the captors are to be paid.

The Captured Cash.

The third question, as to the cash, is necessarily governed by the second, if that is in favor of the captors. It may be discriminated in the fact that the guns are a part of the vessel's equipment, while the money is in the nature of cargo or supplies.

The cargo in prize is entirely separate from the vessel. Contraband of war in a neutral vessel is prize, although the vessel is not; neutral goods on an enemy's vessel are free, although the vessel is condemned (President's Proclamation, April 26, 1898, 30 Stat. L. 1771). The cargo may be thrown overboard in a storm on the way to the prize court and the vessel condemned; or the cargo may be unloaded and the vessel burned at the wharf and thus lost. If both

vessel and cargo are condemned as prize, the value of both is distributed to the captors; but a vessel may be condemned and the cargo released, or *vice versa*. Thus prize money may be paid on either vessel or cargo separately, or on both together.

In *Seventy-eight Bales of Cotton* (21 Fed. Cas. 1100), cotton found floating on the sea, apparently thrown overboard from a blockade runner, was condemned as prize. The cargo was treated as something subject to capture, entirely independent of the capture of the vessel.

So bounty may be paid for the destruction of the vessel and prize money allowed on condemnation of the cargo, of which the money here captured is an equivalent.

The Court Below.

The opinion of the court below was in favor of the condemnation of all property captured from sunken vessels in the *Dewey* case. That opinion covering the point raised in this case, no opinion was rendered in this case. The language of the court below is as follows:

"The next question is whether libellant is entitled to condemnation in prize of the value of property taken from vessels sunk or otherwise destroyed.

"In behalf of the United States it is objected that, inasmuch as libellant has received bounty for the destruction of these vessels under § 4635, he is not entitled, as prize, to property taken from them; that bounty is 'a substitute for the prize itself'—(*The Selma*, 1 Low. 30)—something given 'in lieu of it'. (*Porter* v. *United States*, 106 U. S. 607). Bounty is given in lieu of prize only in the case of a ship or vessel of war belonging to an enemy which is sunk or otherwise destroyed, or which it may be necessary to destroy in consequence of injuries received in action. It is proportioned not to the value of the ship, or of its armament or munitions, but to the number of persons on board of her at the commencement of the engagement. While it may be true that the original idea was that the

amount so ascertained would be a fair substitute for the prize itself, and such idea may have been not far wrong in the days of wooden vessels of war, yet in these days of steel armored cruisers and battle ships, with all of their expensive appliances, the highest amount of bounty allowed is very inconsiderable compared with the value of the ship sunk or destroyed. It is not an equivalent for prize. There is, therefore, no reason arising out of the amount paid as bounty that would justify the claim that, in fairness, such reward should be exclusive.

"The reward is apparently bestowed for the injury done to the enemy in the loss of fighting power; it matters not how valuable may be the appliances and outfit that go down with her or that are involved in her destruction.

"If the vessel were captured, the cargo or outfit and appliances would enter into the estimate of the total value. I find nothing in the statute to prohibit the condemnation in prize of property captured or taken from ships sunk or destroyed in addition to bounty paid for the destruction of the ship, and I am of opinion that it should be allowed."

Conclusion.

The gist of the case is this: The United States came into possession, by reason of the acts of the libellant's fleet, of a vessel, arms and munitions of the enemy, captured in lawful war. The prize statute grants a money reward to the officers and men capturing property in war. The United States can not appropriate the captured property without accounting to the captors for the share which the law grants for their services in securing it.

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